

#### § 4041.44

#### 29 CFR Ch. XL (7–1–06 Edition)

(4) The notice to the PBGC must be filed on PBGC Form 600, Distress Termination, Notice of Intent to Terminate, completed in accordance with the instructions thereto.

(5) In the case of a beneficiary of a deceased participant or an alternate payee, the plan administrator must issue a notice of intent to terminate promptly to any person that becomes an affected party after the proposed termination date and on or before the date a trustee is appointed for the plan pursuant to section 4042(c) of ERISA (or, in the case of a plan that distributes assets pursuant to § 4041.50, the distribution date).

(b) *Contents of notice to affected parties other than the PBGC.* The plan administrator must include in the notice of intent to terminate to each affected party other than the PBGC all of the following information:

(1) The name of the plan and of the contributing sponsor;

(2) The EIN of the contributing sponsor and the PN; if there is no EIN or PN, the notice must so state;

(3) The name, address, and telephone number of the person who may be contacted by an affected party with questions concerning the plan's termination;

(4) A statement that the plan administrator expects to terminate the plan in a distress termination on a specified proposed termination date;

(5) The cessation of accruals information in § 4041.23(b)(4);

(6) A statement as to how an affected party entitled to receive the latest updated summary plan description under section 104(b) of ERISA can obtain it;

(7) A statement of whether plan assets are sufficient to pay all guaranteed benefits or all benefit liabilities;

(8) A brief description of what benefits are guaranteed by the PBGC (*e.g.*, if only a portion of the benefits are guaranteed because of the phase-in rule, this should be explained), and a statement that participants and beneficiaries also may receive a portion of the benefits to which each is entitled under the terms of the plan in excess of guaranteed benefits; and

(9) A statement, if applicable, that benefits may be subject to reduction because of the limitations on the

amounts guaranteed by the PBGC or because plan assets are insufficient to pay for full benefits (pursuant to part 4022, subparts B and D, of this chapter) and that payments in excess of the amount guaranteed by the PBGC may be recouped by the PBGC (pursuant to part 4022, subpart E, of this chapter).

(c) *Spin-off/termination transactions.* In the case of a spin-off/termination transaction (as described in § 4041.23(c)), the plan administrator must provide all participants and beneficiaries in the original plan who are also participants or beneficiaries in the ongoing plan (as of the proposed termination date) with a notice describing the transaction no later than the date on which the plan administrator completes the issuance of notices of intent to terminate under this section.

#### § 4041.44 PBGC review of notice of intent to terminate.

(a) *General.* When a notice of intent to terminate is filed with it, the PBGC—

(1) Will determine whether the notice was issued in compliance with § 4041.43; and

(2) Will advise the plan administrator of its determination, in accordance with paragraph (b) or (c) of this section, no later than the proposed termination date specified in the notice.

(b) *Tentative finding of compliance.* If the PBGC determines that the issuance of the notice of intent to terminate appears to be in compliance with § 4041.43, it will notify the plan administrator in writing that—

(1) The PBGC has made a tentative determination of compliance;

(2) The distress termination proceeding may continue; and

(3) After reviewing the distress termination notice filed pursuant to § 4041.45, the PBGC will make final, or reverse, this tentative determination.

(c) *Finding of noncompliance.* If the PBGC determines that the issuance of the notice of intent to terminate was not in compliance with § 4041.43 (except for requirements that the PBGC elects to waive under § 4041.41(b)(2)(i) with respect to the notice filed with the PBGC), the PBGC will notify the plan administrator in writing—

(1) That the PBGC has determined that the notice of intent to terminate was not properly issued; and

(2) That the proposed distress termination is null and void and the plan is an ongoing plan.

(d) *Information on need to institute section 4042 proceedings.* The PBGC may require the plan administrator to submit, within 20 days after the plan administrator's receipt of the PBGC's written request (or such other period as may be specified in such written request), any information that the PBGC determines it needs in order to decide whether to institute termination or trusteeship proceedings pursuant to section 4042 of ERISA, whenever—

(1) A notice of intent to terminate indicates that benefits currently in pay status (or that should be in pay status) are not being paid or that this is likely to occur within the 180-day period following the issuance of the notice of intent to terminate;

(2) The PBGC issues a determination under paragraph (c) of this section; or

(3) The PBGC has any reason to believe that it may be necessary or appropriate to institute proceedings under section 4042 of ERISA.

(e) *Reconsideration of finding of non-compliance.* A plan administrator may request reconsideration of the PBGC's determination of noncompliance under paragraph (c) of this section in accordance with the rules prescribed in part 4003, subpart C, of this chapter. Any request for reconsideration automatically stays the effectiveness of the determination until the PBGC issues its decision on reconsideration, but does not stay the time period within which information must be submitted to the PBGC in response to a request under paragraph (d) of this section.

(f) *Notice to affected parties.* Upon a decision by the PBGC affirming a finding of noncompliance or upon the expiration of the period within which the plan administrator may request reconsideration of a finding of noncompliance (or, if earlier, upon the plan administrator's decision not to request reconsideration), the plan administrator must notify the affected parties (and any persons who were provided notice under § 4041.43(e)) in writing that the plan is not going to terminate or, if

applicable, that the termination is invalid but that a new notice of intent to terminate is being issued.

#### § 4041.45 Distress termination notice.

(a) *General rule.* The plan administrator must file with the PBGC a PBGC Form 601, Distress Termination Notice, Single-Employer Plan Termination, with Schedule EA-D, Distress Termination Enrolled Actuary Certification, that has been completed in accordance with the instructions thereto, on or before the 120th day after the proposed termination date.

(b) *Participant and benefit information—*(1) *Plan insufficient for guaranteed benefits.* Unless the enrolled actuary certifies, in the Schedule EA-D filed in accordance with paragraph (a) of this section, that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator must file with the PBGC the participant and benefit information described in PBGC Form 601 and the instructions thereto by the later of—

(i) 120 days after the proposed termination date, or

(ii) 30 days after receipt of the PBGC's determination, pursuant to § 4041.46(b), that the requirements for a distress termination have been satisfied.

(2) *Plan sufficient for guaranteed benefits or benefit liabilities.* If the enrolled actuary certifies that the plan is sufficient either for guaranteed benefits or for benefit liabilities, the plan administrator need not submit the participant and benefit information described in PBGC Form 601 and the instructions thereto unless requested to do so pursuant to paragraph (c) of this section.

(3) *Effect of failure to provide information.* The PBGC may void the distress termination if the plan administrator fails to provide complete participant and benefit information in accordance with this section.

(c) *Additional information.* The PBGC may in any case require the submission of any additional information that it needs to make the determinations that it is required to make under this part or to pay benefits pursuant to section 4061 or 4022(c) of ERISA. The plan administrator must submit any information requested under this paragraph